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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 15-3371

EUGENE R. WALKER, JR., APPELLANT,

V.

ROBERT A. MCDONALD,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before BARTLEY, *Judge*.

MEMORANDUM DECISION

Note: Pursuant to U.S. Vet. App. R. 30(a), this action may not be cited as precedent.

BARTLEY, *Judge*: Self-represented veteran Eugene R. Walker, Jr., appeals six August 7, 2015, Board of Veterans' Appeals (Board) decisions. Record (R.) at 2-101. The decisions denied or dismissed the following issues: (1) an initial disability evaluation in excess of 20% for a cervical spine disability; (2) an initial evaluation in excess of 20% for a lumbar spine disability; (3) an initial compensable evaluation for right leg shortening; (4) an initial compensable evaluation for left leg shortening; (5) an effective date earlier than March 22, 2001, for the grant of service connection for a cervical spine disability; (6) an effective date earlier than March 22, 2001, for the grant of service connection for a lumbar spine disability; (7) an effective date earlier than December 12, 2000, for the grant of service connection for right leg shortening; (8) an effective date earlier than February 3, 2003, for the grant of service connection for left leg shortening; (9) whether a Notice of Disagreement (NOD) to a June 2008 rating decision that assigned an effective date for the grant of service connection for a left hip disability was timely; (10) whether an NOD to a June 2008 rating decision that assigned an effective date for the grant of service connection for a right hip disability was timely; (11) whether an NOD to a May 2008 rating decision that assigned an effective date for the grant of service connection for a left ankle disability was timely; (12) whether an NOD to a May 2008 rating decision that assigned an effective date for the grant of service connection for a right

ankle disability was timely; (13) whether an NOD to a October 2008 rating decision that denied service connection for pseudofolliculitis barbae was timely; (14) whether an NOD to a May 2009 rating decision that denied service connection for depression was timely; (15) whether an NOD to a May 2009 rating decision that denied service connection for hepatitis C was timely; (16) whether an NOD to a May 2009 rating decision that denied service connection for a weight disorder was timely; (17) an initial compensable evaluation prior to March 13, 2007, for degenerative joint disease (DJD) of the right hip, and in excess of 40% as of that date; (18) an initial compensable evaluation prior to March 13, 2007, for DJD of the left hip, and in excess of 40% as of that date; (19) an initial evaluation in excess of 10% for polymyopathy[1] of the right hip prior to November 24, 1998, and in excess of 20% as of that date; (20) an initial evaluation in excess of 10% for polymyopathy of the left hip prior to November 24, 1998, and in excess of 20% as of that date; (21) an initial evaluation in excess of 20% for polymyopathy of the right ankle prior to November 24, 1998, and in excess of 30% as of that date; (22) an initial evaluation in excess of 20% for polymyopathy of the left ankle prior to November 24, 1998; in excess of 30% from November 24, 1998, to July 25, 2002; and in excess of 30% as of January 31, 2003; (23) an initial evaluation in excess of 30% for depression; (24) an initial evaluation in excess of 10% for pseudofolliculitis barbae prior to July 17, 2012, and in excess of 30% as of that date; (25) service connection for a prostate disability; and (26) service connection for a weight disorder. *Id*.[2] This appeal is timely and the Court has jurisdiction to review

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[1]"Polymyopathy" is "disease affecting several muscles simultaneously." DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 1490 (32d ed. 2012) [hereinafter DORLAND'S].

[2]The Board granted an earlier effective date of December 12, 2000, for the grant of service connection for right leg shortening and an initial 30% evaluation for pseudofolliculitis barbae as of July 17, 2012. Inasmuch as these findings are favorable to the veteran, the Court will not disturb them. *See Medrano v. Nicholson*, 21 Vet.App. 165, 170 (2007) ("The Court is not permitted to reverse findings of fact favorable to a claimant made by the Board pursuant to its statutory authority"). The Board also remanded the issues of service connection for cataracts; an initial compensable evaluation for dry eyes; an effective date earlier than January 23, 2007, for the grant of service connection for dry eyes; an effective date earlier than November 24, 1998, for a total disability evaluation based on individual unemployability (TDIU); service connection for bilateral ulnar neuropathy; whether special apportionment in the amount of $200 on behalf of the veteran's child, Melissa Smith, is appropriate; whether special apportionment in the amount of $75 on behalf of the veteran's child, Deskye Walker, is appropriate; and waiver of recovery of compensation overpayment in the amount of $600 as a result of an apportionment on behalf of the veteran's child, Deskye Walker, to include whether the payment was properly created. R. at 6, 31-32, 39, 66-67, 73, 81-83, 88-91, 94-97, 99-101. These remanded issues will be addressed in part II.A. In addition, the Board referred to the VA regional office (RO) the issues of service connection for erectile dysfunction and an increased evaluation for hepatitis C. R. at 6. The Court has jurisdiction to review referred issues only to the extent that the appellant argues that remand, rather than referral, was appropriate. *See Young v.*

the Board decision pursuant to 38 U.S.C. §§ 7252(a) and 7266(a). Single-judge disposition is appropriate in this case. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990).

For the reasons that follow, the Court will reverse the Board's August 2015 finding that Mr. Walker did not timely file an NOD as to a June 2008 rating decision and remand issues (9) and (10) for further development, if necessary, and readjudication consistent with this opinion. The Court will also set aside the portions of the August 2015 Board decisions regarding issues (1) through (4), (17) through (22), and (25) through (26), and remand those issues for further development, if necessary, and readjudication consistent with this opinion. The Court will affirm the portions of the August 2015 Board decisions regarding issues (5) through (8), (11) through (16), and (23) through (24).

I. FACTS

Due to the number of issues on appeal, the Court will discuss the facts relevant to each issue in the analysis section below. However, the Court notes at the outset that Mr. Walker served on active duty in the U.S. Army from July 1974 to July 1977. R. at 681.

II. ANALYSIS

Mr. Walker submitted an informal brief containing arguments pertaining to all the issues denied, dismissed, or remanded by the Board, as well as others that were not addressed in any of the six Board decisions on appeal. *See* Appellant's Brief (Br). at 1-26.[3] The Court will address each of these categories of issues in turn.

A. Issues Remanded by the Board

As noted in footnote 2 above, the Board remanded the issues of service connection for cataracts; an initial compensable evaluation for dry eyes; an effective date earlier than January 23,

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Shinseki, 25 Vet.App. 201, 202-03 (2012) (en banc order). Because Mr. Walker has not challenged the propriety of the Board's referrals, the Court will not address the referred issues. *See Link v. West*, 12 Vet.App. 39, 47 (1998) ("Claims that have been referred by the Board to the RO are not ripe for review by the Court.").

[3]The appellant's brief consists of a completed informal brief form and several separately paginated attachments. For ease of reference, the Court will refer to the entire informal brief pacakage as a single, continuously paginated document.

2007, for the grant of service connection for dry eyes; an effective date earlier than November 24, 1998, for the award of TDIU; service connection for bilateral ulnar neuropathy; whether special apportionment in the amount of $200 on behalf of the veteran's child, Melissa Smith, is appropriate; whether special apportionment in the amount of $75 on behalf of the veteran's child, Deskye Walker, is appropriate; and waiver of recovery of compensation overpayment in the amount of $600 as a result of an apportionment on behalf of the veteran's child, Deskye Walker, to include whether the payment was properly created. R. at 6, 31-32, 39, 66-67, 73, 81-83, 88-91, 94-97, 99-101. Although Mr. Walker alleges error as to each of those issues, *see* Appellant's Br. at 4-26, a remand is not a final decision of the Board subject to judicial review, and the Court therefore does not have jurisdiction to consider those issues at this time. *See Howard v. Gober*, 220 F.3d 1341, 1344 (Fed. Cir. 2000); *Breeden v. Principi*, 17 Vet.App. 475, 478 (2004) (per curiam order); 38 C.F.R. § 20.1100(b) (2016). Accordingly, the Court will not further address the foregoing issues remanded by the Board.

B. Issues Not Addressed by the Board

Mr. Walker also presents arguments regarding the following six issues, none of which were addressed in the six Board decisions currently on appeal: "Brain Damage"; "Hepatitis C" (listed separately from the issue of the timeliness of an NOD as to a May 2009 rating decision denying service connection for hepatitis C); "Disability Home Grant"; "Entitlement to an initial rating in excess of regular Special [M]onthly [C]ompensation [(SMC)] to R.2/T to an earlier effective date than September 9, 2009, for a rating based on [the need for aid and attendance]"; "Disability Compensation and Related [C]ompensation Benefits" for a variety of ailments, including "Disability of entire human body [due] to service-connected disability," "Whole intestine, circulatory system, lymphatic system, digestive system, endocrine system, skin, hair, nail, and associated glands, including mammary glands," "Muscular system, the individual muscles of the body, nervous system, brain, spinal cord, peripheral nerves, male testes, vas deferens, seminal vesicles, prostates, [and] penis," "Respiratory system, skeletal system, the individual 206 bones of the skeleton and associated ligaments and other structures," and "Excretory system, organs of special sense and a list of over 60 individual organs or pair of organs February 26, 2014 [sic]"; and an evaluation in excess of 10% for a history of sarcoidosis prior to January 9, 1986. Appellant's Br. at 4, 6.

Because the Court's jurisdiction "is premised on and defined by the Board's decision concerning the matter being appealed," *Ledford v. West*, 136 F.3d 776, 779 (Fed. Cir. 1998), "when the Board has not rendered a decision on a particular issue, the [C]ourt has no jurisdiction to consider it," *Howard*, 220 F.3d at 1344. Therefore, the Court lacks jurisdiction over the foregoing issues and will not address the merits of his arguments regarding those issues.

The Court does, however, possess jurisdiction to determine whether an issue was reasonably raised by the record. *See Barringer v. Peake*, 22 Vet.App. 242, 244 (2008); *see also Robinson v. Peake*, 21 Vet.App. 545, 552 (2008) (requiring the Board to address all issues expressly raised by the appellant or reasonably raised by the record), *aff'd sub nom. Robinson v. Shinseki*, 557 F.3d 1355 (Fed. Cir. 2009). To the extent that Mr. Walker's arguments regarding brain damage, hepatitis C, a "disability home grant," increased SMC, compensation for the entire human body, and an increased sarcoidosis evaluation prior to January 9, 1986, can be liberally construed as allegations that those issues were reasonably raised and the Board erred in failing to address them, *see De Perez v. Derwinski*, 2 Vet.App. 85, 86 (1992) (liberally construing the pleadings of a pro se appellant), the Court agrees with the Secretary that the Board did not err in not addressing those issues. *See* Secretary's Br. at 12-18.

With respect to brain damage, the veteran cites pages 6575 and 8127 of the record as evidence of Board error. Appellant's Br. at 7, 9. Neither of those pages refers to brain damage or a head injury of any kind. *See* R. at 6575 (January 1999 discharge summary from a private behavioral health center diagnosing major depression), 8127 (excerpt from an August 1992 Social Security Administration decision granting disability benefits based on sarcoidosis and polymyositis of the hips and ankles). To the extent that the cited documents refer to alcohol abuse, they do not reflect that the veteran filed a claim for service connection for alcohol abuse secondary to any service-connected disability, and the remainder of the record before the Court does not contain such a claim or any document evincing an intent to seek benefits for alcohol abuse. *See Criswell v. Nicholson*, 20 Vet. App. 501, 504 (2006) ("[W]here there can be found no intent to apply for VA benefits, a claim for entitlement to such benefits has not been reasonably raised."); *Brannon v. West*, 12 Vet.App. 32, 35 (1998) (explaining that "[t]he mere presence of . . . medical evidence does not establish an intent on the part of the [appellant] to seek [VA benefits]" and that, "[w]hile the Board

must interpret the appellant's submissions broadly, the Board is not required to conjure up issues that were not raised by the appellant"). Therefore, the Court concludes that a claim for VA benefits for brain damage was not reasonably raised by the record.

Regarding hepatitis C, the Board referred a claim for an increased evaluation for service-connected hepatitis C to the RO for initial adjudication, R. at 6, and, as explained in footnote 2 above, that claim is not currently before the Court. *See Young*, 25 Vet.App. at 202-03; *Link*, 12 Vet.App. at 47. Although Mr. Walker argues that VA has "many incorrect facts and correct facts regarding this issue," Appellant's Br. at 7, the pages of the record that he cites in support of that argument do not reasonably raise any theory of entitlement to additional benefits related to hepatitis C that are not covered by the referred claim or the NOD timeliness issue addressed in part II.E.3 below. In other words, the Court discerns no reasonably raised claim for VA benefits related to hepatitis C that the Board did not address.

As to a "disability home grant," the record reflects that Mr. Walker applied for and was denied specially adapted housing. *See, e.g.*, R. at 3032, 7467, 9574. The record does not, however, indicate that he timely disagreed with the denial of specially adapted housing benefits or otherwise filed a claim for such benefits after being initially denied. Therefore, entitlement to specially adapted housing was not reasonably raised by the record.

Nor was entitlement to increased SMC. Although the RO in March 2011 awarded SMC based on the need for aid and attendance effective September 9, 2009, R. at 3026-32, the record before the Court, including the pages cited in his brief, does not contain an NOD as to the level of SMC awarded. The Board therefore had no obligation to discuss the issue.

With respect to service connection for "entire human body," Appellant's Br. at 6, the record contains a December 2013 VA Form 9 in which Mr. Walker requests "service[ ]connection disabilities for everything." R. at 242. Although he appears to have expressly sought service connection for the entire human body, as he indicates in his brief, such a request is too broad and nonspecific to satisfy the requirement that an informal claim adequately identify the benefit sought. *See Brokowski v. Shinseki*, 23 Vet.App. 79, 89 (2009) (concluding that a writing that requested service connection for "all disabilities of record" was too broad to satisfy 38 C.F.R. § 3.155(a)'s requirement that an informal claim "identify the benefit sought" because accepting such language

as adequately identifying the benefit sought would nullify that specificity requirement). Because Mr. Walker did not adequately identify the benefit sought, the December 2013 VA Form 9 was not a valid informal claim for service connection for a specific disability and the Board therefore did not err in not adjudicating that issue.

Finally, to the extent that Mr. Walker cites pages of the record allegedly pertaining to an increased sarcoidosis evaluation prior to January 9, 1986, Appellant's Br. at 12, he has not demonstrated that he has either continuously appealed the November 1986 RO decision that granted service connection for myopathy with histological evidence of inflammation and history of sarcoidosis and assigned a 10% evaluation effective January 9, 1986, *see* R. at 8241-42, 8695-96; filed a motion to revise that RO decision on the basis of clear and unmistakable error (CUE); or pursued any other avenue that could have resulted in an earlier effective date, such as 38 C.F.R. § 3.156(c). In other words, he has not shown that the issue of entitlement to an earlier effective date for an evaluation for sarcoidosis or any of the subsequently recharacterized service-connected disabilities for polymyopathy of individual joints with a history of sarcoidosis was reasonably raised by the record.

In sum, the Court concludes that the Board did not err in not addressing brain damage, hepatitis C (other than those issues mentioned above), a "disability home grant," increased SMC, compensation for the entire human body, and an increased sarcoidosis evaluation prior to January 9, 1986. *See Barringer*, 22 Vet.App. at 244; *Robinson*, 21 Vet.App. at 552.

C. Secretary's Concessions of Error: Issues (1) through (4) and (17) through (22)

The Secretary concedes that the Board provided inadequate reasons or bases for its decision as to the following issues: (1) an initial evaluation in excess of 20% for a cervical spine disability; (2) an initial evaluation in excess of 20% for a lumbar spine disability; (3) an initial compensable evaluation for right leg shortening; (4) an initial compensable evaluation for left leg shortening; (17) an initial compensable evaluation prior to March 13, 2007, for DJD of the right hip, and in excess of 40% as of that date; (18) an initial compensable evaluation prior to March 13, 2007, for DJD of the left hip, and in excess of 40% as of that date; (19) an initial evaluation in excess of 10% for polymyopathy of the right hip prior to November 24, 1998, and in excess of 20% as of that date; (20) an initial evaluation in excess of 10% for polymyopathy of the left hip prior to November 24,

1998, and in excess of 20% as of that date; (21) an initial evaluation in excess of 20% for polymyopathy of the right ankle prior to November 24, 1998, and in excess of 30% as of that date; and (22) an initial evaluation in excess of 20% for polymyopathy of the left ankle prior to November 24, 1998; in excess of 30% from November 24, 1998, to July 25, 2002; and in excess of 30% as of January 31, 2003. Secretary's Br. at 18-22. He therefore asks the Court to set aside those portions of the August 2015 Board decisions and remand the matters for readjudication. *Id*. The Court agrees that remand of those issues is warranted.

In rendering its decision, the Board is required to provide a written statement of reasons or bases for its "findings and conclusions[] on all material issues of fact and law presented on the record." 38 U.S.C. § 7104(d)(1). The statement must be adequate to enable a claimant to understand the precise basis for the Board's decision and to facilitate review in this Court. *Gilbert v. Derwinski*, 1 Vet.App. 49, 57 (1990). To comply with this requirement, the Board must analyze the credibility and probative value of evidence, account for evidence it finds persuasive or unpersuasive, and provide reasons for rejecting material evidence favorable to the claimant. *Caluza v. Brown*, 7 Vet.App. 498, 506 (1995), *aff'd per curiam*, 78 F.3d 604 (Fed. Cir. 1996) (table).

With respect to issues (1) through (4), entitlement to higher initial evaluations for cervical and lumbar spine disabilities and right and left leg shortening, the Court agrees with the Secretary that the Board did not adequately explain its application of the relevant diagnostic codes (DCs), mischaracterized findings of the July 2012 VA examiner regarding functional loss, and failed to address apparent inconsistencies in that examination report regarding intervertebral disc syndrome. R. at 22-23. Given that the Board is required to discuss all relevant provisions of law and regulation, *see Schafrath v. Derwinski*, 1 Vet.App. 589, 593 (1991), consider the disabling effects of pain when evaluating musculoskeletal conditions, *see Mitchell v. Shinseki*, 25 Vet.App. 32, 43-44 (2011); *DeLuca v. Brown*, 8 Vet.App. 202, 206-07 (1995); 38 C.F.R. §§ 4.40 (2016), 4.45 (2016), ensure that any VA examination upon which it relies contains accurate facts and adequate supporting rationale, *see Acevedo v. Shinseki*, 25 Vet.App. 286, 293 (2012); *Nieves-Rodriguez v. Peake*, 22 Vet.App. 295, 301 (2008), and "resolve internal inconsistencies in [an] examination report," *Henry v. Derwinski*, 2 Vet.App. 506, 507 (1992), the foregoing deficiencies render inadequate the Board's reasons or bases for denying higher initial evaluations for the veteran's service-connected

cervical and lumbar spine disabilities and right and left leg shortening. *See Caluza*, 7 Vet.App. at 506; *Gilbert*, 1 Vet.App. at 57. Remand of issues (1) through (4) is therefore warranted. *See Tucker v. West*, 11 Vet.App. 369, 374 (1998) (holding that remand is the appropriate remedy "where the Board has incorrectly applied the law, failed to provide an adequate statement of reasons or bases for its determinations, or where the record is otherwise inadequate").

With respect to issues (17) through (22), higher initial evaluations for right and left hip DJD and polymyopathy and right and left ankle polymyopathy, the Board likewise failed to discuss how it determined the appropriate evaluation under the applicable DCs and failed to take into account any additional limitation of motion of those joints due to pain. R. at 55-56. The Board's analysis in this regard consists merely of statements that each of the veteran's hip and ankle disabilities was manifested by no more than the criteria for the assigned evaluation. R. at 55. Such analysis is too conclusory to inform the veteran of the precise basis for the denials of higher evaluations for his service-connected right and left hip and ankle disabilities and to permit meaningful judicial review. *See Gilbert*, 1 Vet.App. at 57; *see also Dennis v. Nicholson*, 21 Vet.App. 18, 22 (2007) ("[M]erely listing the evidence before stating a conclusion does not constitute an adequate statement of reasons or bases."). Remand of issues (17) through (22) is thus warranted because the Board provided inadequate reasons or bases for its decision on those issues. *See Tucker*, 11 Vet.App. at 374.

D. Additional Issues Requiring Remand: Issues (9), (10), (25), and (26)

The Secretary argues that the Court should affirm the remaining issues on appeal because the Board's decisions on those issues had a plausible basis in the record and were supported by adequate reasons or bases. Secretary's Br. at 22-29. With respect to issues (9), (10), (25), and (26), the Court disagrees.

1. Whether the Veteran Timely Filed an NOD as to a June 2008 Rating Decision: Issues (9) and (10)

The Board found that Mr. Walker did not timely file an NOD as to a June 2008 rating decision that assigned effective dates for the grants of service connection for right and left DJD because VA did not receive an NOD as to that decision within one year of mailing notice of that decision to him on August 4, 2008. R. at 27. The Board explained that the first correspondence

from the veteran regarding the June 2008 rating decision was received by VA in October 2012, more than four years later. *Id*. However, a review of the record reveals that finding to be erroneous.

Appellate review of an adverse RO decision is initiated by filing an NOD and completed by filing a Substantive Appeal after a Statement of the Case (SOC) has been issued. 38 U.S.C. § 7105(a); 38 C.F.R. § 20.200 (2016); *see Murphy v. Shinseki*, 26 Vet.App. 510, 514 (2014); *Jarrell v. Nicholson*, 20 Vet.App. 326, 331 (2006) (en banc). An NOD is "[a] written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result." 38 C.F.R. § 20.201 (2014);[4] *see Gallegos v. Principi*, 283 F.3d 1309, 1313-14 (Fed. Cir. 2002). An NOD must be written "in terms which can be reasonably construed as disagreement with that determination and a desire for appellate review," and "the specific determinations with which the claimant disagrees must be identified." 38 C.F.R. § 20.201.

"In determining whether a written communication constitutes an NOD, the Court looks at both the actual wording of the communication and the context in which it was written." *Jarvis*, 12 Vet.App. at 561; *see Rivera v. Shinseki*, 654 F.3d 1377, 1382 (Fed. Cir. 2011) (explaining that VA is required "to consider the full context within which [veterans'] submissions are made"). This inquiry is guided by the "statutory and regulatory regime that Congress created to protect veterans," *Collaro v. West*, 136 F.3d 1304, 1308 (Fed. Cir. 1998), including VA's duty to liberally construe the filings of pro se claimants, *see Rivera*, 654 F.3d at 1380 (acknowledging that VA has a "duty to read the documents that a claimant files in support of his appeal liberally and sympathetically"); *see also Durr v. Nicholson*, 400 F.3d 1375, 1380 (Fed. Cir. 2005); *Clemons v. Shinseki*, 23 Vet.App. 1, 5 (2009). Whether a document is an NOD is a question of law that the Court reviews de novo. *See Beyrle v. Brown*, 9 Vet.App. 24, 28 (1996).

Contrary to the Board's finding, R. at 27, the record contains a document filed by Mr. Walker within one year of the August 4, 2008, mailing of notice of the June 2008 rating decision that

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[4]Until recently, VA would accept NODs in any form, so long as they complied with § 20.201. *See Jarvis v. West*, 12 Vet.App. 559, 561 (1999). In September 2014, VA amended § 20.201 to require the filing of an NOD on a standard form. *See* Standard Claims and Appeals Forms, 79 Fed. Reg. 57,660 (Sept. 25, 2014). That requirement applies "only with respect to claims and appeals filed 180 days after the date this rule is published in the Federal Register as a final rule," i.e., after March 24, 2015. 79 Fed. Reg. at 57,686. "Claims and appeals pending under the [then-]current regulations as of that date would continue to be governed by the current regulations." *Id.*

satisfies all the elements of an NOD as to that decision. Specifically, the record contains a copy of the June 2008 rating decision, date stamped as received by the RO on August 22, 2008, that bears the following handwritten expression of disagreement: "Enough! Now is the time for the United States Supreme Court. Sincerely yours, Eugene Walker Jr. 14 August 2008." R. at 4398. That handwritten note is a written communication from Mr. Walker that expresses dissatisfaction with the adjudicative determinations made by the RO in the June 2008 decision upon which the note is written and expresses a desire to contest the result, albeit to the wrong appellate body.

In light of VA's duty to liberally construe the pleadings of pro se claimants, *see Rivera*, 654 F.3d at 1380, the Court concludes that Mr. Walker's handwritten note on the June 2008 rating decision constitutes a timely filed NOD as to that decision, and the Board's erroneous finding to the contrary must be reversed. *See Deloach v. Shinseki*, 704 F.3d 1370, 1380 (Fed. Cir. 2013) (explaining that reversal is appropriate "where the Board has performed the necessary factfinding and explicitly weighed the evidence" and this Court, based "on the entire evidence, . . . is left with the definite and firm conviction that a mistake has been committed"). Accordingly, the Court will remand issues (9) and (10) to the Board to consider whether the veteran is entitled to earlier effective dates for the grants of service connection for right and left DJD.

2. Service Connection for a Prostate Disability: Issue (25)

Mr. Walker argues that the Board "constantly contradict[ed] itself" when denying his claim for service connection for a prostate disability. Appellant's Br. at 7. Insofar as the Board's denial was based on a lack of evidence of in-service prostate problems, the Court agrees.

The Board denied service connection for a prostate disability because it found that Mr. Walker's service treatment records (STRs) were "negative for complaint, treatment, or diagnosis related to . . . prostate . . . problems," R. at 78, and his reports of in-service prostate problems were not credible because they "were provided many years after his discharge from active service and are inconsistent with the clinical evidence of record in service," R. at 80. The record, however, contains numerous STRs reflecting in-service prostate problems, which directly contradict the Board's finding in this regard. *See* R. at 701 (January 1973 STR indicating that a prostatic massage was performed), 720 (January 1974 STR reflecting the same), 757 (January 1975 STR referencing a prostate examination and prostatic massage), 752 (April 1975 STR noting that "Prostate feels enlarged and

fluctuant"); *see also* R. at 3291 (November 2008 Court remand in docket number 07-0597 stating: "According to the Board, his service medical records (SMRs) revealed that in January and April 1975, he was treated for prostatitis. R. at 34."). Therefore, to the extent that the Board found that the veteran's STRs did not reflect prostate problems in service and impugned his credibility on that basis, it clearly erred. *See Deloach*, 704 F.3d at 1380; *see also Buchanan v. Nicholson*, 451 F.3d 1331, 1336 (Fed. Cir. 2006) (holding that the Board may not find lay evidence not credible solely because it is not corroborated by contemporaneous medical records).

The Board also denied service connection for a prostate disability because the only linkage opinion of record, a July 2012 VA medical opinion, was against the veteran's claim. R. at 78-79. However, that examiner committed the same error as the Board; namely, she rejected the veteran's lay statement that he had prostate problems in service around 1975 because "no note on his STR was found regarding this incident." R. at 2288. The examiner ultimately opined that the veteran's current benign prostate hypertrophy (BPH) was less likely than not incurred in or aggravated by service because, inter alia, "[n]o entry about prostatic condition was noted in his STRs." R. at 2297. Insofar as her opinion was based on the lack of evidence of in-service prostate problems, it was based on an inaccurate factual premise and was therefore inadequate for adjudication purposes. *See Acevedo*, 25 Vet.App. at 293 (explaining that "an adequate medical report must rest on correct facts"); *Reonal v. Brown*, 5 Vet.App. 458, 461 (1993) ("An opinion based upon an inaccurate factual premise has no probative value.").

Accordingly, the Court holds that the Board erred in relying on the July 2012 VA medical opinion to deny the veteran's claim for service connection for a prostate disability. *See Ardison v. Brown*, 6 Vet.App. 405, 407 (1994) (holding that the Board errs when it relies on an inadequate medical examination report or opinion). Remand of issue (25) is therefore warranted so that the Board can obtain an adequate medical opinion addressing the etiology of the veteran's current prostate disability and readjudicate the claim on the proper factual basis reflected in the record. *See Barr v. Nicholson*, 21 Vet.App. 303, 311 (2007) ("[O]nce the Secretary undertakes the effort to provide an examination when developing a service-connection claim, . . . he must provide an adequate one."); *Tucker*, 11 Vet.App. at 374.

3. Service Connection for a Weight Disorder: Issue (26)

Mr. Walker next challenges the Board's denial of service connection for a weight disorder on the ground that the Board misconstrued his lay statements regarding his weight gain after service and failed to account for evidence that he misunderstood the September 2012 VA examiner's questions regarding his claimed weight disorder. Appellant's Br. at 7. In light of these arguments and the evidence cited by the veteran in his brief, *id*. at 7, 9, the Court is persuaded that the Board provided inadequate reasons or bases for its reliance on the September 2012 VA examiner's opinion.

Mr. Walker underwent a VA examination in September 2012 to assess whether he had a current weight disorder and, if so, whether it was related to service or a service-connected disability. *See* R. at 2102. The examiner reviewed the veteran's claims file and completed a disability benefits questionnaire, checking the box indicating that "[t]he claimed condition is less likely than not . . . proximately due to or the result of the [v]eteran's service[-]connected condition." R. at 2103-04. The examiner explained: "Veteran states that he no longer has a weight disorder, and wishes to no longer pursue a claim for this condition. (Veteran states that his weight was 150 lbs (normal) at military discharge, and prior problems with being significantly overweight cannot be related to established medical disability conditions.[)]" R. at 2104.

The next month, in October 2012, Mr. Walker sent the RO a letter, which, in pertinent part, stated:

> I am refil[]ing my appeal for service connection for [a] weight disorder. Upon the time when seen by the doctor I was confused. I have had a weight [disorder] for over 30 years. My weight has declined but it is not enough. I have an extremely large stomach and abnormally small disabling weight loss from waist down and my deltoids are gone leaving my shoulders nothing but pure bone. For my height and body conditioning due to being in a wheelchair, I am still overweight and have long surpassed my ideal weight.

R. at 1997. He submitted another letter in November 2012 asserting that he "reinstated" his appeal of the weight disorder claim the prior month and that, "at the time of the [September 2012 VA] medical examination[,] I must have misunderstood the doctor . . . or he misunderstood me."[5] R. at 245.

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[5]As is addressed in greater detail in part II.E.3 below, the Board ultimately found that Mr. Walker did not withdraw his appeal of his claim for service connection for a weight disorder. R. at 28.

In one of the decisions currently on appeal, the Board denied service connection for a weight disorder because it found, relying on the September 2012 VA examination, that there was no evidence of a current weight disorder related to service or a service-connected disability. R. at 79. Although the Board acknowledged the veteran's October 2012 letter, it stated only that the veteran had asserted that he was overweight, his weight problem had existed for over 30 years, and that he believed it was related to medication use, deconditioning, and the required use of a wheelchair. *Id*. The Board did not discuss the veteran's October and November 2012 statements that he misunderstood the examiner's question as to whether he had a current weight disorder and unintentionally indicated that he did not have such a disorder. R. at 245, 1997. Nor did it address the evidence of record that demonstrates that the veteran gained 30 to 50 pounds following service, evidence that may indicate that he has or had a weight disorder during the claim and appeal period. *Compare* R. at 691 (July 1974 entrance examination: 128 lbs.), 688 (March 1977 separation examination: 147 lbs.), *with* R. at 3229 (July 2010: 174 lbs.); *see also* Appellant's Br. at 7, 9.

Those statements and medical records call into question the adequacy of the September 2012 VA opinion because it is unclear whether the examiner based his negative linkage opinion solely on the veteran's confused report that he no longer believed that he had a weight disorder. The examiner's supporting rationale for his opinion lends no insight into his thought process on the matter, as it amounts to no more than a recognition that the veteran wished to no longer pursue a claim for service connection for a weight disorder, coupled with a conclusory statement that "prior problems with being significantly overweight cannot be related to established medical disability conditions." R. at 2104; *see Nieves-Rodriguez*, 22 Vet.App. at 301 ("[A] medical examination report must contain not only clear conclusions with supporting data, but also a reasoned medical explanation connecting the two."); *Stefl v. Nicholson*, 21 Vet.App. 120, 125 (2007) (holding that "a mere conclusion by a medical doctor is insufficient to allow the Board to make an informed decision as to what weight to assign to a doctor's opinion"); *Miller v. West*, 11 Vet.App. 345, 348 (1998) ("A bare conclusion, even one reached by a health care professional, is not probative without a factual predicate in the record."). To the extent that the examiner also noted that the veteran's weight was normal at separation from service, that fact appears irrelevant to the theory of secondary service

connection posited by the veteran–i.e., that his service-connected disabilities, not service itself, caused his post-service weight gain. *See, e.g.*, R. at 1997; Appellant's Br. at 7.

At a minimum, the foregoing discrepancies between the veteran's September 2012 report of no current weight disorder as noted by the VA examiner and his October and November 2012 statements that he did in fact have such a problem raise a question as to the adequacy of the examiner's negative linkage opinion that the Board was required to address before relying on that opinion. *See Bowling v. Principi*, 15 Vet.App. 1, 12 (2001) (emphasizing the Board's duty to address whether "further evidence or clarification of the evidence . . . is essential for a proper appellate decision"); 38 C.F.R. § 4.2 (2016) ("[I]f [an examination] report does not contain sufficient detail, it is incumbent upon the rating board to return the report as inadequate for evaluation purposes."); *see also Nieves-Rodriguez*, 22 Vet.App. at 300 ("[T]he content of information and evidence received by VA may require an appropriate response, consistent with the duty to assist."). The Board's failure to do so renders inadequate its reasons or bases for relying on that examination to deny his claim for service connection for a weight disorder, *see Caluza*, 7 Vet.App. at 506; *Gilbert*, 1 Vet.App. at 57, necessitating remand of issue (26), *see Tucker*, 11 Vet.App. at 374.

E. Issues to be Affirmed: Issues (5) through (8), (11) through (16), and (23) through (24)

For the following reasons, the Court agrees with the Secretary that the Board properly denied or dismissed the remaining issues and that affirmance of those portions of the Board decisions is warranted.

1. Earlier Effective Dates: Issues (5) through (8)

Mr. Walker contends that he is entitled to effective dates earlier than March 22, 2001, for the grant of cervical and lumbar spine disabilities (issues (5) and (6)); earlier than December 12, 2000, for the grant of service connection for right leg shortening (issue (7)); and earlier than February 3, 2003, for the grant of service connection for left leg shortening (issue (8)). Appellant's Br. at 4, 10. The Board denied earlier effective dates for those conditions because the assigned effective dates corresponded to the dates of receipt of the veteran's original claims for those conditions and the record did not contain informal claims received prior to those dates. R. at 26.

The Board's denial of earlier effective dates for the grants of service connection for cervical and lumbar spine disabilities and right and left leg shortening was not clearly erroneous because,

under 38 U.S.C. § 5110(a) and 38 C.F.R. § 3.400(b)(2)(i), the earliest effective date for a grant of service connection based on an original claim is the date of receipt of the claim or the date entitlement arose, whichever is later. *See Mitchell v. McDonald*, 27 Vet.App. 431, 433 (2015). Although Mr. Walker cites numerous pages of the record in support of his argument that he was entitled to earlier effective dates, none of those pages contains a formal or informal claim[6] for service connection for a cervical or lumbar spine disability or right or left leg shortening that could be the basis of an award of an earlier effective date. *See* Appellant's Br. at 10 (citing R. at 2279, 2281, 2314, 2323-24, 2400, 5886, 6018, 7024, 7148, 7524, 8695). Many of those documents are medical records referencing the claimed disabilities, some of which predate VA's receipt of the original claims; however, medical records without some evidence of an accompanying intent to apply for VA benefits cannot constitute original, informal claims for service connection. *See Brannon*, 12 Vet.App. at 35; *see also MacPhee v. Nicholson*, 459 F.3d 1323, 1325 (Fed. Cir. 2006) (explaining that, to qualify as an informal claim, a written document must evince an intent to apply for benefits and identify the benefits sought).

Given that Mr. Walker has not identified any document of record that could constitute an informal or formal claim for service connection for cervical or lumbar spine disabilities that predates March 22, 2001, for right leg shortening that predates December 12, 2000, or for left leg shortening that predates February 3, 2003, the Court concludes that he has failed to carry his burden of demonstrating that the Board clearly erred in assigning those effective dates. *See Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc) (holding that the appellant has the burden of demonstrating error), *aff'd per curiam*, 232 F.3d 908 (Fed. Cir. 2000) (table); *see also Evans v. West*, 12 Vet.App. 396, 401 (1999) (explaining that the Court reviews the Board's effective date determination for clear error). The Court also concludes that the Board's reasons or bases for denying earlier effective dates for those conditions were adequate because they were understandable and facilitative of judicial review. *See Gilbert*, 1 Vet.App. at 57. Thus, Mr. Walker's challenges to issues (5) through (8) fail.

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[6]In September 2014, VA also amended its regulations regarding informal claims. *See* Standard Claims and Appeals Forms, 79 Fed. Reg. 57,660 (Sept. 25, 2014). Before the effective date of that amendment, VA would accept an informal claim–i.e., "[a]ny communication or action[] indicating an intent to apply for one or more benefits," 38 C.F.R. § 3.155(a) (2014)–as an original claim for effective date purposes. *See Norris v. West*, 12 Vet.App. 413, 416 (1999). The abolition of informal claims does not apply to claims and appeals pending before March 24, 2015. *See* 79 Fed. Reg. at 57,686; *see also supra* note 4.

2. Whether the Veteran Timely Filed an NOD as to a May 2008 Rating Decision: Issues (11) and (12)

Mr. Walker next argues that the Board erred in finding that he did not file a timely NOD as to the Board's assignment of earlier effective dates for the grants of service connection for right and left ankle disabilities because "[a]ll of [his] claims were filed within 30 days of being notif[ied]," Appellant's Br. at 8. He also asks: "[H]ow can any of these matters not have been filed in a timely manner when the United States Court of Appeals for Veterans Claims was opened in 2005? Everything as of the above date until the [Court] has closed th[e] claim[s] is in a timely manner." *Id*. These arguments are unavailing.

As with issues (9) and (10), the Board determined that Mr. Walker had not timely filed an NOD as to the May 2008 rating decision because he had not submitted a written expression of disagreement with that decision to VA until October 2012. R. at 27. However, unlike with issues (9) and (10), the record before the Court does not contain a document that could be construed as a timely NOD as to the May 2008 rating decision, and the handwritten note on the June 2008 rating decision cannot liberally be construed to apply to the May 2008 rating decision. The pages of the record that he cites in support of his argument consist of documents that either postdate mailing of notice of the May 2008 rating decision by more than one year, *see* R. at 180-81, 230-31; predate that decision, R. at 3913, 3938-40, 7023, 7042, 7106, 7370, 7543, 7547, 7661, 7702, 7915, 8114; or do not express disagreement with that decision, R. at 3290, 7659, 7667. *See* Appellant's Br. at 10-11. Those pages of the record, therefore, do not reflect that Mr. Walker timely filed an NOD as to the May 2008 rating decision.

Regarding Mr. Walker's specific arguments, Appellant's Br. at 8, neither the pages of the record cited in his informal brief nor the Court's review of the record reveals evidence that he filed an NOD as to the May 2008 rating decision within 30 days of notice of that decision being mailed, as he alleges. Moreover, Mr. Walker's reference to this Court being opened in 2005 is not only inaccurate, it also reflects a misunderstanding of the appellate process. Contrary to the veteran's contention, the existence of the Court does not automatically place all adverse RO decisions in appellate status; rather, governing statutes and regulations make clear that, to initiate an appeal of such a decision, the claimant must file an NOD within one year of VA mailing notice of the decision.

38 U.S.C. § 7105(a), (b)(1); 38 C.F.R. §§ 20.200, 20.302(a) (2016). Accordingly, the Court concludes that he has failed to carry his burden of demonstrating error with respect to issues (11) and (12). *See Hilkert*, 12 Vet.App. at 151.

3. Whether the Veteran Timely Filed NODs as to October 2008 and May 2009 Rating Decisions: Issues (13) through (16)

Mr. Walker makes identical arguments with respect to issues (13) through (16), whether he timely filed NODs as to an October 2008 rating decision denying service connection for pseudofolliculitis barbae and as to a May 2009 rating decision that denied service connection for depression, hepatitis C, and a weight disorder. *See* Appellant's Br. at 8. Those arguments, as well as his citations to various pages in the record, are of no moment because the RO improperly adjudicated and certified for appeal those timeliness issues.

As the Board points out, R. at 28, the RO in June 2008 granted service connection for depression and hepatitis C and assigned 30% and noncompensable evaluations for those conditions, respectively, effective December 20, 2000,[7] R. at 4398-4404. In October 2008, the RO granted service connection for pseudofolliculitis barbae and assigned a 10% evaluation effective August 15, 2000. R. at 4354-56. Mr. Walker timely appealed the evaluations and effective dates assigned in both decisions, *see, e.g.*, R. at 2584, 4012-13, 4165, and, in February 2012, the Board denied a compensable evaluation for hepatitis C and earlier effective dates for all three conditions, R. at 2588-92. He did not appeal those issues to the Court and they became final. *See* R. at 28. The Board also remanded the issues of entitlement to higher evaluations for depression and pseudofolliculitis barbae, R. at 2594-2602, which were ultimately denied by the Board in one of the six decisions currently on appeal before the Court, R. at 56-65.

Therefore, although the RO in October 2012 apparently issued an SOC addressing whether the veteran had timely filed NODs as to an October 2008 rating decision *denying* service connection for pseudofolliculitis barbae and a May 2009 rating decision *denying* service connection for depression and hepatitis C, that action was ultra vires because service connection for those conditions had already been granted and the Board ultimately recognized that he timely appealed the

[7]In January 2009, the RO awarded earlier effective dates of August 15, 2000, for these grants of service connection. R. at 4165-73.

downstream evaluation and effective date issues for those conditions. *See Braan v. McDonald*, 28 Vet.App. 232, 239 (2016) (explaining that an ultra vires decision is a nullity and the Board's consideration of such a decision must be dismissed). In other words, because the timeliness issues certified to the Board were erroneously identified by the RO and Mr. Walker was given the opportunity to challenge the evaluation and effective dates assigned for the grants of service connection for pseudofolliculitis barbae, depression, and hepatitis C, the Board properly dismissed issues (13) through (15) without prejudicing the veteran.

Similarly, the Board appropriately dismissed issue (16)–i.e., whether Mr. Walker timely filed an NOD as to a May 2009 rating decision that denied service connection for a weight disorder–because it found that the claim for service connection for a weight disorder "remain[ed] on appeal from a July 2003 rating decision," R. at 28, and addressed it in one of the six Board decisions currently on appeal, R. at 75-81. Thus, any timeliness argument regarding issue (16), like those for issues (13) through (15), is necessarily moot.

4. Initial Evaluation in Excess of 30% for Depression: Issue (23)

Mr. Walker next challenges the Board's denial of an initial evaluation in excess of 30% for depression. Appellant's Br. at 6, 12. He does not make a specific argument with respect to that issue, but he does cite numerous pages in the record, which presumably he believes demonstrate entitlement to a higher depression evaluation. *Id*. at 12. The Court disagrees.

Depression is evaluated as 30% disabling when it causes:

> [o]ccupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal), due to such symptoms as: depressed mood, anxiety, suspiciousness, panic attacks (weekly or less often), chronic sleep impairment, mild memory loss (such as forgetting names, directions, recent events).

38 C.F.R. § 4.130, DCs 9433-35 (2016). To qualify for the next higher evaluation of 50%, depression must manifest with

> [o]ccupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment; impaired

abstract thinking; disturbances of motivation and mood; difficulty in establishing and maintaining effective work and social relationships.

Id.

Use of the term "such symptoms as" in § 4.130 indicates that the list of symptoms that follows is nonexhaustive, meaning that VA is not required to find the presence of all, most, or even some of the enumerated symptoms to assign a particular evaluation. *Vazquez-Claudio v. Shinseki*, 713 F.3d 112, 115 (Fed. Cir. 2013); *see Sellers v. Principi*, 372 F.3d 1318, 1326-27 (Fed. Cir. 2004); *Mauerhan v. Principi*, 16 Vet.App. 436, 442 (2002). However, because "[a]ll nonzero disability levels [in § 4.130] are also associated with objectively observable symptomatology," and the plain language of the regulation makes it clear that "the veteran's impairment must be 'due to' those symptoms," "a veteran may only qualify for a given disability rating under § 4.130 by demonstrating the particular symptoms associated with that percentage, or others of similar severity, frequency, and duration." *Vazquez-Claudio*, 713 F.3d at 116-17. Although the veteran's symptoms are the "primary consideration" in assigning a disability evaluation under § 4.130, the determination as to whether the veteran is entitled to a particular evaluation "also requires an ultimate factual conclusion" as to the veteran's level of occupational and social impairment. *Id*. at 118.

The Board's determination of the appropriate degree of disability is a finding of fact subject to the "clearly erroneous" standard of review set forth in 38 U.S.C. § 7261(a)(4). *See Smallwood v. Brown*, 10 Vet.App. 93, 97 (1997). As with any finding on a material issue of fact and law presented on the record, the Board must support its degree-of-disability determination with an adequate statement of reasons or bases. 38 U.S.C. § 7104(d)(1); *Gilbert*, 1 Vet.App. 49, 52 (1990); *see Mittleider v. West*, 11 Vet.App. 181, 182 (1998) (explaining that the need for adequate reasons or bases is "particularly acute when [Board] findings and conclusions pertain to the degree of disability resulting from mental disorders").

The Board reviewed the evidence of record regarding Mr. Walker's service-connected depression and noted that his symptoms throughout the relevant period included depressed mood, anxiety, and chronic sleep impairment, which had been found to cause no more than moderate impairment. R. at 58-60. The Board explained that, although the evidence reflected some symptoms contemplated by the criteria for evaluations higher than 30%, "[t]he frequency, severity, and duration

of the symptoms is more consistent with the currently assigned 30[%] rating[,] which is assigned where a mental disorder results in occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupation tasks, although generally functioning satisfactorily." R. at 60. The Board addressed the criteria for a 50% evaluation, but concluded that the evidence as a whole did not reflect the frequency, severity, and duration of symptoms or the level of occupational and social impairment contemplated by a 50% evaluation. *Id*. Therefore, it denied entitlement to an evaluation for depression in excess of 30%. *Id*.

The foregoing is precisely the type of comparative, qualitative assessment of the veteran's service-connected mental disorder required by *Vazquez-Claudio*, 713 F.3d at 116-17, and *Mauerhan*, 16 Vet.App. at 442, and the Court discerns no clear error in the Board's determination that no more than a 30% evaluation was warranted for that condition. Furthermore, the Board supported that determination with an adequate explanation that informed the veteran of the precise basis for the Board's decision and facilitated judicial review. *See Caluza*, 7 Vet.App. at 506; *Gilbert*, 1 Vet.App. at 52. None of the pages cited by the veteran contains findings relevant to the assessment of his service-connected depression, *see* Appellant's Br. at 12, and the Court's review of the record does not reveal any material, favorable evidence that the Board overlooked as to that issue. Accordingly, the Court concludes that Mr. Walker has not carried his burden of demonstrating error with respect to that aspect of the Board's decision. *See Hilkert*, 12 Vet.App. at 151.

5. Initial Evaluations for Pseudofolliculitis Barbae: Issue (24)

Mr. Walker likewise makes no specific argument as to the issue of entitlement to initial evaluations in excess of 10% for pseudofolliculitis barbae prior to July 17, 2012, and in excess of 30% as of that date, other than to cite numerous pages in the record allegedly supporting such entitlement. Appellant's Br. at 6, 12. The Court is not persuaded that the Board committed remandable error as to this issue.

Mr. Walker's pseudofolliculitis barbae has been evaluated under 38 C.F.R. § 4.118, DC 7813, which pertains to dermatophytosis, including of the beard area. R. at 60-63. DC 7813 does not contain specific evaluation criteria, but instead directs VA to evaluate dermatophytosis or an analogous skin condition either under DC 7800 for disfigurement of the head, face, or neck; DCs 7801, 7802, 7804, or 7805 for scars; or DC 7806 for dermatitis, depending on the predominant

disability.[8] 38 C.F.R. § 4.118, DC 7813. The current version of DC 7806 provides a 10% evaluation for dermatitis of at least 5%, but less than 20%, of the entire body or exposed areas; or that requires intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs for a total duration of less than six weeks during the past 12-month period. *Id*. A 30% evaluation is warranted for dermatitis of 20 to 40% of the entire body or exposed areas; or that requires systemic therapy such as corticosteroids or other immunosuppressive drugs for a total duration of six weeks or more, but not constantly, during the past 12-month period. *Id*. A 60% evaluation is assigned for dermatitis of more than 40% of the entire body or exposed areas; or that requires constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs during the past 12-month period. *Id*.

The Board found that Mr. Walker was not entitled to a pseudofolliculitis barbae evaluation in excess of 10% prior to July 17, 2012, because the relevant evidence of record–namely, a September 2007 VA skin examination–indicated that pseudofolliculitis barbae affected less than 5% of the veteran's entire body and between 5 and 20% of his exposed skin and that he used a corticosteroid medication only "as needed" to treat that condition. R. at 62-63. Although the record does not contain a copy of that examination report, the veteran has not identified any evidence of record that contradicts those findings, nor can the Court locate any. Mr. Walker has therefore failed to carry his burden of demonstrating either a clear error or a reasons-or-bases error in the Board's denial of an initial evaluation in excess of 10% for pseudofolliculitis barbae for the first period on appeal. *See Hilkert*, 12 Vet.App. at 151.

The same is true for the later period on appeal. With respect to that period, the Board concluded that an evaluation of 30%, but no higher, was warranted because a July 2012 VA skin examination showed that, although the percentages of the veteran's exposed skin and entire affected by pseudofolliculitis barbae were the same as in September 2007, the veteran reported that he used an oral antihistamine and hydrocortisone cream to treat that condition for six weeks or more, but not constantly, over the previous year. R. at 62-63. As the Board explained, that increase in systemic

[8]Mr. Walker does not allege, nor does the record reflect, evidence of disfigurement or scars related to pseudofolliculitis barbae. Therefore, the Court will focus solely on the Board's evaluation under the criteria for DC 7806. *See* R. at 62-63.

therapy corresponded to a 30% evaluation since July 17, 2012, the date of the VA examination, but did not demonstrate the constant or near constant systemic therapy necessary for the next higher evaluation of 60%. *Id*. Mr. Walker has again not identified any evidence that supports entitlement to a higher evaluation since July 17, 2012, and the Court's review of the record, including the pages cited by the veteran, does not reveal any such evidence. *See* Appellant's Br. at 12. Therefore, the Court cannot conclude that the Board committed a clear error in denying entitlement to a pseudofolliculitis barbae evaluation in excess of 30% for that period. *See Smallwood*, 10 Vet.App. at 97. Nor is the Court persuaded that the Board provided inadequate reasons or bases for this aspect of its decision. *See Caluza*, 7 Vet.App. at 506; *Gilbert*, 1 Vet.App. at 57. As such, the Court will affirm the Board's decision as to issue (24).

III. CONCLUSION

Upon consideration of the foregoing, the Board's August 2015 finding that Mr. Walker did not timely file an NOD as to a June 2008 rating decision is REVERSED and issues (9) and (10) are REMANDED for further development, if necessary, and readjudication consistent with this opinion. The portions of the August 2015 Board decisions regarding issues (1) through (4), (17) through (22), and (25) through (26) are SET ASIDE and those issues are REMANDED for further development, if necessary, and readjudication consistent with this opinion. The portions of the August 2015 Board decisions regarding issues (5) through (8), (11) through (16), and (23) through (24) are AFFIRMED.

DATED: November 30, 2016

Copies to:

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